

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of Developing a Unified Intercarrier Compensation Regime))))	CC Docket No. 01-92
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**Reply Comments of the
Montana Public Service Commission**

I. INTRODUCTION AND SUMMARY

The FCC, in its November 8, 2006 Public Notice (PN), seeks comments on the “Missoula Plan Phantom Traffic Interim Process and Call Detail Records proposal” (“Phantom Traffic” proposal in these Reply Comments). Prior to the release of this PN the supporters of the Missoula Plan (the “Plan” in these Reply Comments) filed on November 6, 2006, their *ex parte* asking the FCC to adopt immediately their Phantom Traffic proposal.

The Montana Public Service Commission (MPSC) initiated in 2004 its own proceeding (D2004.5.84), and has on three occasions held workshops on intercarrier compensation (ICC) and related matters. The most recent workshop, held November 17, 2006, addressed the Missoula Plan. Certain participants at that workshop urged the MPSC to file reply comments in response to the FCC’s PN. In these reply comments, the MPSC will respond to certain of the filed initial comments on the Phantom Traffic proposal. First, we provide some background.

II. BACKGROUND

On July 24, 2006, the supporters filed the Plan with the FCC. The Plan’s comprehensive and interim solutions provide a framework to resolve phantom traffic issues.¹ When certain calls lack sufficient signaling information to enable proper billing for ICC purposes the appropriate rating of calls is hindered. The Plan requires the delivery of accurate telephone number signaling information to ensure that traffic can be

¹ In its December 7, 2006 comments Qwest describes phantom traffic to include: intrastate terminating access traffic that is erroneously designated as interstate; traffic mischaracterized to increase access revenues, and long distance traffic erroneously designated as local traffic, e.g., VNXX. CenturyTel describes phantom traffic as inadequately labeled, or mislabeled, traffic that cannot be properly billed.

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properly identified and classified, and it offers a uniform framework for the generation and exchange of call-detail records (CDRs). Enforcement is a last resort for providers that fail to comply with the Plan's rules. The Plan's call signaling rules explain what information must be sent downstream, ultimately to the terminating carrier, and provide for dispute resolution within 90 days. The Plan's exceptions to call signaling rules exempt the originating and the intermediate providers from certain rules. The Plan also provides for the enforcement with remedies of the call signaling rules. The Plan offers a uniform procedural process for the generation and the exchange of CDRs.

The Plan's supporters agreed on an interim solution, one that would remain in effect until a comprehensive plan is adopted. Once the industry proposal involving the creation and exchange of call-detail records is filed with the FCC, the Plan's supporters will advocate for the immediate release of an FCC order for the interim period. The Plan's supporters request an interim order that achieves numerous objectives. In short, that is the framework for the plan's comprehensive solution for phantom traffic.

In their November 6, 2006 Phantom Traffic proposal the supporters of the Plan request that the FCC immediately adopt the interim process and adopt a uniform (permanent) process as part of an order that adopts the overall Plan.² While the Phantom Traffic proposal is a complex proposal that will not be repeated here, certain key elements are noteworthy. First, the FCC should direct the Ordering and Billing Forum (OBF) to add the Uniform Process requirements to the Multiple Exchange Carriers Access Billing (MECAB) Standards Document; however for the interim process this is not required.

Second, the Phantom Traffic proposal includes the following parts. The supporters request the FCC to (1) implement the call signaling and enforcement proposals; (2) confirm that carriers sending traffic via indirect interconnection arrangements and not the transit service providers, are responsible to pay terminating carriers' ICC charges; and (3) extend the requirements of the T-Mobile Order to interconnection arrangements between ILECs and other wireline carriers. Another aspect of the Phantom Traffic proposal regards the creation and the exchange of CDRs and call summary information. The key improvement is a uniform requirement to provide transit

² Regarding the permanent process, the supporters label their filing the "Uniform Process for the Creation and Exchange of Call Detail Records (the 'Uniform Process')..." They further explain that because their proposals are "default rules" carriers responsible for paying ICC charges, carriers responsible to provide call detail records and/or call summary information and carriers that are entitled to bill ICC charges may agree to use alternative arrangements.

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traffic call information. Last, the supporters request that the FCC in its order adopting the Phantom Traffic proposal clarify that when a CLEC or CMRS carrier collaborates with an ILEC to jointly provide switched access service for the termination or origination of an IXC's traffic, that such CLEC or CMRS carrier be subject to requirements set forth in the MECAB Standards Document.

In its PN, the FCC seeks comments on the Phantom Traffic proposal.

III. DISCUSSION

The MPSC takes this opportunity to explain how nondiscriminatory intercarrier compensation for Montana carriers was addressed by the Montana Legislature. The 2003 Montana Legislature enacted legislation to, in part, mitigate concerns about phantom traffic See §69-3-815, MCA. This statute imposes obligations on originating, interexchange and transiting carriers to transmit information to enable the terminating carrier to identify, measure and appropriately charge for the termination of telecommunications traffic. This statute requires the negotiation of an interconnection agreement by LECs and CMRS providers if requested by the terminating carrier. The statute also allows a registered telecommunications carrier to file a complaint with the MPSC requesting enforcement of this statute. Enforcement may include the ordering of compensation to the terminating carrier and the authorization of the refusal to terminate traffic. The MPSC was informed during its November 17, 2006 workshop that this statute is effective in achieving the desired goal. During the workshop certain carriers appealed to the MPSC to file in support of the expected interim proposal. In light of this Montana statute, the MPSC considers the merit of the present Phantom Traffic proposal and the initial comments that certain carriers have filed in response.

In addition to the supporters who filed the November 6, 2006 *ex parte*, certain carriers have expressed unconditional support for the Phantom Traffic proposal; other carriers have offered conditional support; still others have filed in opposition.³ The MPSC is sympathetic to those that support the immediate adoption of a solution to the phantom traffic problem. State legislatures can obviously attempt to remedy the

³ Parties that unconditionally support the immediate adoption of the Phantom Traffic proposal include the: National Telecommunications Cooperative Association, National Exchange Carrier Association, Inc., Eastern Rural Telecom Association, Organization for the promotion and Advancement of Small Telecommunications Companies ("the Associations") and the Western Telecommunications Alliance. Other parties, including Frontier Communications, the Rural Independent Competitive Alliance and CenturyTel Inc., conditionally support the Phantom Traffic proposal. Qwest objects to the Phantom Traffic proposal.

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problem; but despite the best efforts of state Legislatures, phantom traffic remains a problem. The MPSC does not, however, support federal rules that would infringe on the MPSC's authority to address phantom traffic and related ICC issues.

The MPSC does support the overall framework and intent of the Phantom Traffic proposal. The supporters are to be commended for their effort, as are the commenters that seek to make reasonable modifications to the proposal. The MPSC concurs that the FCC should expeditiously address phantom traffic issues. The MPSC urges the FCC to quickly and methodically act to adopt rules. Like others, the MPSC is not convinced that all related intercarrier compensation issues, e.g., VNXX, can be resolved.⁴ The MPSC in the balance of these reply comments will respond to certain opinions and proposals contained in the December 7, 2006 comments. The MPSC may augment these reply comments in subsequent comments that are more generally addressed to the Missoula plan.

CenturyTel Inc Initial Comments

In its initial December 7, 2006 comments, CenturyTel Inc. (CTI) supports the immediate adoption of phantom traffic rules and further supports modifications to the Phantom Traffic proposal. The MPSC agrees with CTI on this overall recommendation. As for the detailed proposals in CTI's comments the MPSC responds as follows. First, the MPSC agrees with CTI that the provision of full CDRs, not just call summary information, is a reasonable modification. This is because, as CTI notes, call summaries are not a substitute for CDRs. In addition, the MPSC expects that the duration of the interim proposal is not known with any certainty. Second, the MPSC agrees with CTI that giving terminating carriers the choice between Category 11-01-xx CDRs, and negotiating a rate with the transit carrier in lieu of new charges, may also have merit so long as the former CDR, for which there was no charge, continues to provide sufficient billing information. Third, the MPSC agrees with CTI that VoIP traffic cannot all be assumed to be interstate traffic. An attempt should be made to delineate that portion of VoIP traffic that is intrastate traffic, so that such traffic can be assessed the associated terminating access charges. In addition, the MPSC believes that the importance of addressing VoIP traffic on an interim basis is crucial, again due to the uncertain duration

⁴ Although the Associations did not explicitly mention "VNXX," they include (p. 6) as a portion of "phantom" traffic that traffic which results from intentional actions by service providers to disguise the nature of their traffic so as to receive termination service for free or at a lower rate than what legally should be charged. In its October 25, 2006 comments on the Missoula Plan, CenturyTel Inc., held that the plan does not resolve the most glaring opportunities for regulatory arbitrage: it does nothing to address VNXX.

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of an interim. Fourth, CTI's proposal to excuse carriers from call signaling requirements, in limited circumstances where there are technological barriers, is at least worthy of consideration as a modification to the Phantom Traffic proposal. Fifth, because of the complex relationship between stronger enforcement in conjunction with allegations of gaming to avoid better signaling capability, the MPSC has no comment. Enforcement (penalties) for inferior signaling appears too circumstantial for any reasoned comment.

Frontier Communications

In its initial December 7, 2006 comments, Frontier Communications (FC) indicates support for the general outline of the interim Phantom Traffic proposal, but offers specific improvements. The MPSC agrees with FC that the FCC should address phantom traffic in advance of any general ICC reform. The FC makes other comments, as follows. First, FC holds that traffic subject to the MECAB Standards Document should not be excluded. Second, FC endorses specific and enforceable penalties, involving paying triple the appropriate rate, plus interest. In the event that an offending carrier does not rectify the problem the injured carrier would be permitted to not terminate the carrier's traffic. Third, FC perceives that the interim plan would allow the transit provider to elect to create and charge for records even if the terminating carrier has no need for them. Last, FC is opposed to the part of the Missoula plan that imposes on carriers electing to create call summaries under the interim to then create CDRs under the permanent provision of the plan.

The MPSC only addresses FC's third comment. With respect to that the MPSC suggests that the matter could be resolved by the FCC's adoption of CTI's second proposal, described above.

Qwest Communications Inc.

In its initial December 7, 2006 comments Qwest recommends rejecting the November 6, 2006 ex parte (Supplemental proposal) filed by the supporters of the Missoula Plan. Qwest did, however, also support immediate FCC action on phantom traffic issues, a comment with which the MPSC agrees. Qwest's other comments include the following. First, the primary reason that Qwest recommends rejection is that the proposal places the "transit service providers" in the position of being a records clearing house, charged with policing originating and terminating carriers and, with an accompanying "change in the law," by apparently including as transit traffic non-access traffic for which the transit carrier has no "end-user" relationship. That is, transit service providers would be obliged to provide CDRs. Qwest's preference is a requirement that all

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carriers exchanging local traffic be obliged to enter into agreements for the exchange of such traffic and services. In Qwest's opinion, the interim relief sought would, although presented as an "autonomous proposal," pre-judge numerous fundamental and fiercely debated concepts – namely the transit service proposal. Second, Qwest opposed the proposal to extend the requirements of the T-Mobile Order to IAs between ILECs and other wireline carriers. Third, while the proposal allows a \$.0025 charge per CDR of the terminating carrier, there is no allowance for the additional costs that a transit traffic provider will incur. Fourth, Qwest objects to the part of the proposal that requires that when a CMRS carrier collaborates with an ILEC in originating and terminating an IXC's traffic, such carrier comply with the MECAB Standards for JPSA. Qwest's objection is that this single part of the permanent solution would be made part of the interim solution. Fifth, Qwest objects to the carrier notification process due to the burden it imposes on transit service providers. Last, Qwest opposes the supplemental proposal that would impose a new mandatory process for identifying VoIP-originated traffic, deeming all such traffic as interstate. Qwest's opposition in part stems from the unnecessary pre-judging of an outcome in the larger ICC proceeding. It also assumes that intrastate access charges will not apply to VoIP traffic. Also, jurisdiction over VoIP traffic has not been sufficiently settled to allow for a resolution of this proposal. As Qwest states, "There is no reason to...treat VoIP calls any differently than other information service calls."

The MPSC will limit its comments on Qwest's initial comments to Qwest's comments on VoIP traffic. The MPSC remains concerned that VoIP traffic may escape responsibility for appropriate terminating access charges. No such exemption should be allowed in either an interim or a permanent resolution of phantom traffic. In this regard, the MPSC disagrees with Qwest's characterization of VoIP as another information service. The FCC has not ruled on this jurisdictional matter. In any case, it would be anticompetitive – not competitively neutral – to excuse VoIP traffic that terminates on the PSTN from paying appropriate access rates, including intrastate rates when appropriate. Given the nature of such traffic, assumptions, rebuttable if necessary, could be made about the percent of traffic that is of each jurisdictional type. To do otherwise, is to assume all such traffic is interstate.

IV. CONCLUSION

The MPSC has limited comments in part due to the complexity of the phantom traffic issues. That said, the MPSC concurs with all parties that phantom traffic ought to be elevated to a high level of importance and carefully addressed by the FCC on an expedited basis. The MPSC would only add that many of the issues appear to exist

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because of the continued differential between the various types of charges for access (i.e., reciprocal compensation versus interstate and intrastate carrier access). To the extent that rates are more cost based the phantom traffic issue should be, in part, mitigated. The MPSC may file additional comments on phantom traffic issues.

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Respectfully submitted,

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